

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.9594 OF 2004

Dr.Yatin Gopalkrishna Joag ..Petitioner

Vs.

Dr.Yashshree Yatin Joag ..Respondent

Mr.Y.S.Jahagirdar with Mr.P.S.Dani for Petitioner
Mr.P.K.Dhakephalkar for Respondent

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WITH

WRIT PETITION NO. 531 OF 2005

Smt.Yashshree Yatin Joag ..Petitioner

Vs.

Yatin Gopalkrishna Joag ..Respondent

Mr.P.K.Dhakephalkar with Mr.S.U.Dhakephalkar for
Petitioner
Mr.Y.S.Jahagirdar with Mr.P.S.Dani for
Respondent-Caveator

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CORAM : B.H.MARLAPALLE, J.

DATE : FEBRUARY 9, 2005

P.C.:

1. Heard Mr.Jahagirdar, learned Senior Counsel with Mr.Dani for the petitioner-husband who is aggrieved by the order passed by the IIIrd Ad-hoc Addl. Dist. Judge Solapur below Exh.140 on 18.10.2004 in H.M.P. No.103 of 2003.

2. The said proceedings have been initiated by the petitioner-husband and the wife is opposing. She had moved an application at Exhibit-54 initially to bring on record additional evidence by way of audio cassettes in her possession and the application came to be rejected after hearing both the parties on 1.9.2003. She moved a fresh application at Exh.97 supported by an affidavit. The same was also opposed by the husband. However, the learned IIIrd Ad-Hoc Addl. Dist. Judge, Solapur after hearing both the documents partly allowed the said application and allowed production of two tapes but did not allow the production of remaining tapes by order dated 6/9th August, 2004. The wife was not happy with the said order and therefore, she approached this Court in W.P.No. 7834 of 2004. Without notice to the husband, petition came to be disposed of on 22.9.2004 granting liberty to the wife to submit a fresh application by providing material particulars of the remaining tapes and by filing an affidavit and consequently she submitted the application at Exh.140 which was opposed by the husband by filing his say at Exh. 146. The learned Judge by the impugned order has allowed the production of tapes dated 16.10.2002, 10.6.2003, 24.6.2003 and 22.7.2003 and the prayer for remaining tapes came to be rejected and therefore, the wife has also filed W.P.No. 531 of 2005 against the

said order.

3. Mr.Jahagirdar, the learned Senior Counsel submitted that the application at Exh.140 suffered from the doctrine of estoppel and in any case in her written statement, the wife had not furnished the details of the audio tape and therefore, any application subsequently filed, was not in keeping with the provisions of the Order VIII Rule 14 of C.P.C. and these amended provisions were applicable to the divorce proceedings initiated by the husband, it was not proper for the trial Court to allow the same application by relying upon the order passed by this Court in W.P.No. 7834 of 2004. Mr.Dhakephalkar, the learned counsel for the wife, on the other hand, submitted that the learned Judge had allowed similar application at Exh.97 partly and the said order was not challenged by the husband and therefore, it would not be permissible for him to take support of the provisions of Order VIII Rule 14 of C.P.C. at this stage. He further submitted that these orders are interlocutory orders and the permission granted to place on record material facts, which by itself is not an evidence and in any case, both the parties could be heard at length during the trial of the main proceedings i.e. H.M.P. No. 103 of 2003.

4. So far as the principle of estoppel is concerned, the same would not apply in the instant case in view of the liberty granted by this Court in W.P.No. 7834 of 2004 to apply afresh. At the same time, the application which would be filed afresh, was directed to be decided on its own merits. The application at Exh.97 was partly allowed by order dated 1.9.2003, the Court observed that though the evidence was not pleaded specifically in the written statement, it was necessary that the evidence in the custody of either of the parties was allowed to be placed on record if specific contentions in respect of the alleged transcriptions were reduced into writing by the wife and affidavit in support thereof was filed. The other tapes were not allowed to be produced only because they lacked important materials particulars and for want of affidavit.

5. The impugned interlocutory order has also considered that all the tapes were not required to be taken on record and only four tapes have satisfied the requirements of material details and the affidavit in support thereof had been allowed to be taken on record. This discretion exercised by the Lower Court though may not be in keeping with the strict requirements of Order VIII Rule 14 of C.P.C., would not cause prejudice per se to the husband at

this stage and in any case the veracity of this evidence has to be tested during the trial of the main proceedings. The reasoning given by the Lower Court in disallowing the remaining tapes also does not call for any interference.

5. Under the circumstances, the challenge to the impugned order raised by both the parties need not be gone into at this stage and therefore, these petitions are rejected summarily.

[B.H.MARLAPALLE, J.]